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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 ALEC WILLIAMS, JR.,
8 Plaintiff,
9 v.
10 STATE OF NEVADA et al.,
11 Defendants.
12

Case No. 2:18-cv-01286-RFB-EJY
SCREENING ORDER

13 Plaintiff, who is in the custody of the Nevada Department of Corrections ("NDOC"),
14 has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an
15 application to proceed *in forma pauperis*. ECF Nos. 1, 1-1. The Court now screens
16 Plaintiff's civil rights complaint pursuant to 28 U.S.C. § 1915A.

17 **I. IN FORMA PAUPERIS APPLICATION**

18 Plaintiff's application to proceed *in forma pauperis* is granted. ECF No. 1. Based
19 on the information regarding Plaintiff's financial status, the Court finds that Plaintiff is not
20 able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. §
21 1915. Plaintiff will, however, be required to make monthly payments toward the full
22 \$350.00 filing fee when he has funds available.

23 **II. SCREENING STANDARD**

24 Federal courts must conduct a preliminary screening in any case in which a
25 prisoner seeks redress from a governmental entity or officer or employee of a
26 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any
27 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
28 upon which relief may be granted or seek monetary relief from a defendant who is immune

1 from such relief. See 28 U.S.C. § 1915A(b)(1),(2). Pro se pleadings, however, must be
2 liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).
3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
4 (1) the violation of a right secured by the Constitution or laws of the United States, and
5 (2) that the alleged violation was committed by a person acting under color of state law.
6 See West v. Atkins, 487 U.S. 42, 48 (1988).

7 In addition to the screening requirements under § 1915A, pursuant to the Prison
8 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the
9 allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a
10 claim on which relief may be granted, or seeks monetary relief against a defendant who
11 is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure
12 to state a claim upon which relief can be granted is provided for in Federal Rule of Civil
13 Procedure 12(b)(6), and the court applies the same standard under § 1915 when
14 reviewing the adequacy of a complaint or an amended complaint. When a court
15 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
16 complaint with directions as to curing its deficiencies, unless it is clear from the face of
17 the complaint that the deficiencies could not be cured by amendment. See Cato v. United
18 States, 70 F.3d 1103, 1106 (9th Cir. 1995).

19 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
20 Chappel v. Lab. Corp. of America, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure
21 to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
22 support of the claim that would entitle him or her to relief. See Morley v. Walker, 175 F.3d
23 756, 759 (9th Cir. 1999). In making this determination, the Court takes as true all
24 allegations of material fact stated in the complaint, and the court construes them in the
25 light most favorable to the plaintiff. See Warshaw v. Xoma Corp., 74 F.3d 955, 957 (9th
26 Cir. 1996). Allegations of a pro se complainant are held to less stringent standards than
27 formal pleadings drafted by lawyers. See Hughes v. Rowe, 449 U.S. 5, 9 (1980). While
28 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff

1 must provide more than mere labels and conclusions. Bell Atlantic Corp. v. Twombly,
2 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
3 insufficient. Id.

4 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
5 that, because they are no more than mere conclusions, are not entitled to the assumption
6 of truth.” Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). “While legal conclusions can
7 provide the framework of a complaint, they must be supported with factual allegations.”
8 Id. “When there are well-pleaded factual allegations, a court should assume their veracity
9 and then determine whether they plausibly give rise to an entitlement to relief.” Id.
10 “Determining whether a complaint states a plausible claim for relief . . . [is] a context-
11 specific task that requires the reviewing court to draw on its judicial experience and
12 common sense.” Id.

13 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed
14 sua sponte if the prisoner’s claims lack an arguable basis either in law or in fact. This
15 includes claims based on legal conclusions that are untenable (e.g., claims against
16 defendants who are immune from suit or claims of infringement of a legal interest which
17 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
18 fantastic or delusional scenarios). See Neitzke v. Williams, 490 U.S. 319, 327-28 (1989);
19 see also McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991).

20 **III. SCREENING OF COMPLAINT**

21 In the complaint, Plaintiff sues multiple defendants for events that took place while
22 Plaintiff was incarcerated at High Desert State Prison (“HDSP”). ECF No. 1-1 at 1.
23 Plaintiff sues Defendants State of Nevada, Nevada Department of Corrections, Offender
24 Management Division, Warden Brian Williams, and James Dzurenda. Id. at 2-3. Plaintiff
25 alleges one count and seeks monetary damages.¹ Id. at 5, 9.

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28 ¹ Inmate Daryl E. Gholson helped Plaintiff prepare the complaint. (ECF No. 1-1 at 9).

1 The complaint alleges that Defendants knew or should have known that they
2 should have been applying NRS § 209.4465(7)(b) to Plaintiff's minimum sentence, thus,
3 making him eligible for parole sooner. Id. at 3, 5. Plaintiff alleges Fourteenth Amendment
4 due process and equal protection violations. Id. at 5.

5 As an initial matter, the Court recognizes that Plaintiff is challenging Defendants'
6 failure to apply good time credits to Plaintiff's minimum sentence and parole eligibility date
7 as directed by NRS § 209.4465(7). NRS § 209.4465(7) permits good time credits to be
8 applied to a prisoner's minimum sentence, in certain circumstances, thus, making an
9 inmate eligible for parole sooner than he or she would have been without the credits. See
10 NRS § 209.4465(7); Williams v. State Dep't of Corr., 402 P.3d 1260, 1262 (Nev. 2017).
11 Because Plaintiff's lawsuit revolves around his parole eligibility date and not his
12 underlying conviction or overall sentence, he may proceed with this § 1983 action. See
13 Wilkinson v. Dotson, 544 U.S. 74, 82 (2005) (holding that if a civil claim merely would
14 speed up the plaintiff's *consideration* for parole and would not necessarily imply the
15 invalidity of the duration of confinement, then that claim may proceed in a § 1983 action).

16 **A. Due Process**

17 In order to state a Fourteenth Amendment due process claim, a plaintiff must
18 adequately allege that he was denied a specified liberty interest and that he was deprived
19 of that liberty interest without the constitutionally required procedures. Swarthout v.
20 Cooke, 562 U.S. 216, 219 (2011). In Nevada, state prisoners do not have a liberty interest
21 in parole or parole eligibility. See Moor v. Palmer, 603 F.3d 658, 661-62 (9th Cir. 2010).
22 Additionally, allegations that a defendant violated state law are not sufficient to state a
23 claim for violation of the Fourteenth Amendment's due process clause. Swarthout, 562
24 U.S. at 222 (holding that "a 'mere error of state law' is not a denial of due process).

25 The Court finds that Plaintiff fails to state a colorable due process claim based on
26 the allegations that Defendants violated NRS § 209.4465(7)(b) and deprived him of an
27 earlier parole eligibility date. Plaintiff cannot establish a liberty interest in his parole
28 eligibility date. Moreover, the failure to properly apply NRS § 209.4465(7) constitutes an

1 error of state law and cannot be the basis of a due process claim. As such, the Court
2 dismisses the due process claim, with prejudice, as amendment would be futile.

3 **B. Equal Protection**

4 The Equal Protection Clause of the Fourteenth Amendment is essentially a
5 direction that all similarly situated persons be treated equally under the law. City of
6 Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). In order to state an
7 equal protection claim, a plaintiff must allege facts demonstrating that defendants acted
8 with the intent and purpose to discriminate against him based upon membership in a
9 protected class, or that defendants purposefully treated him differently than similarly
10 situated individuals without any rational basis for the disparate treatment. Lee v. City of
11 Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001); see also Vill. of Willowbrook v. Olech,
12 528 U.S. 562, 564 (2000).

13 The Court finds that Plaintiff fails to state a colorable equal protection claim.
14 Plaintiff has not made any allegations that even attempt to support an equal protection
15 claim. As such, the Court dismisses the claim without prejudice.

16 **IV. CONCLUSION**

17 For the foregoing reasons, it is ordered that Plaintiff's application to proceed *in*
18 *forma pauperis* (ECF No. 1) without having to prepay the full filing fee is **granted**. Plaintiff
19 shall **not** be required to pay an initial installment fee. Nevertheless, the full filing fee shall
20 still be due, pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation Reform
21 Act. The movant herein is permitted to maintain this action to conclusion without the
22 necessity of prepayment of fees or costs or the giving of security therefor. This order
23 granting *in forma pauperis* status shall not extend to the issuance and/or service of
24 subpoenas at government expense.

25 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915, as amended by
26 the Prison Litigation Reform Act, the Nevada Department of Corrections shall pay to the
27 Clerk of the United States District Court, District of Nevada, 20% of the preceding month's
28 deposits to the account of Alec Williams, Jr., #1004943 (in months that the account

1 exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk shall
2 send a copy of this order to the attention of **Chief of Inmate Services for the Nevada**
3 **Department of Prisons**, P.O. Box 7011, Carson City, NV 89702.

4 IT IS FURTHER ORDERED that, even if this action is dismissed, or is otherwise
5 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended
6 by the Prison Litigation Reform Act.

7 IT IS FURTHER ORDERED that the Clerk of the Court file the complaint (ECF No.
8 1-1).

9 IT IS FURTHER ORDERED that the Fourteenth Amendment due process claim is
10 dismissed, with prejudice, as amendment would be futile.

11 IT IS FURTHER ORDERED that the Fourteenth Amendment equal protection
12 claim is dismissed without prejudice.

13 IT IS FURTHER ORDERED that the Clerk of the Court close this case and enter
14 judgment accordingly.

15 IT IS FURTHER ORDERED that this Court certifies that any *in forma pauperis*
16 appeal from this order would **not** be taken "in good faith" pursuant to 28 U.S.C. §
17 1915(a)(3).

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19 DATED this 4th day of October, 2019.

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22 RICHARD F. BOULWARE, II
23 UNITED STATES DISTRICT JUDGE
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